

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

vs.

5:17-mj-523

PATRICK D. ANGELO,

Defendant.

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*Detention Hearing - December 8, 2017*

James Hanley Federal Building, Syracuse, New York

HONORABLE THÉRÈSE WILEY DANCKS

United States Magistrate Judge, Presiding

A P P E A R A N C E S

For Government:                    OFFICE OF THE UNITED STATES ATTORNEY  
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For Defendant:                    FEDERAL PUBLIC DEFENDER'S OFFICE  
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    BY: RANDI JUDA BIANCO, ESQ.

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3  
4 THE CLERK: The Court calls United States versus  
5 Patrick Angelo, case 5:17-mj-523. Counsel, please note your  
6 appearance for the record.

7  
8 MR. GESTRING: Good afternoon, Your Honor. Craig  
9 Gestring, Assistant United States Attorney, on behalf of the  
10 United States.

11  
12 THE COURT: Good afternoon, Mr. Gestring.

13  
14 MS. BIANCO: Good afternoon, Your Honor. Randi  
15 Bianco and Juan Rodriguez and behalf of Patrick Angelo. Also  
16 present in the courtroom are his parents.

17  
18 THE COURT: Good afternoon, Ms. Bianco,  
19 Mr. Rodriguez, Mr. and Mrs. Angelo, and Mr. Angelo.

20  
21 We are here for the detention hearing. Since we  
22 were last together, I want to make sure that everybody got  
23 the updated reports and information. I have in front of me a  
24 Pretrial Services Report dated September 21 of 2017, an  
25 addendum of today's date, December 8. I also have  
Dr. Lazzaro's report dated December 7th. And then I have the  
parents' letter of November 30th as well.

Mr. Gestring, do you have all of those documents?

MR. GESTRING: Judge, I have received both of the  
Pretrial Services Reports; the original report dated 1  
December as well as the addendum dated today. I have had an  
opportunity to review both of those. We likewise received  
and reviewed the 7 December report from Dr. Lazzaro. I have

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1 not seen the parents' letter, but I think I can probably  
2 proceed without it at this point.

3 THE COURT: That came before the last hearing. I  
4 have a copy if you would like to see a copy of it.

5 MR. GESTRING: Thank you, Judge. May I approach?

6 THE COURT: Yes. Ms. Bianco, you have all of those  
7 documents?

8 MS. BIANCO: I do, Your Honor.

9 THE COURT: All right. Mr. Gestring, when you're  
10 ready to proceed.

11 MR. GESTRING: Thank you, Judge. I've reviewed the  
12 letter dated 30 November, returning it to the Court.

13 THE COURT: Thank you.

14 MR. GESTRING: Judge, it appears the letter is  
15 consistent with the material in the Pretrial Services  
16 Addendum, so I don't think there is anything new or unique in  
17 there.

18 Your Honor, it's the United States' position that  
19 there are no condition or set of conditions that could  
20 adequately protect the public, and specifically the victim,  
21 from this defendant. It's the position of the United States,  
22 Judge, that the defendant is a danger to the community, and  
23 we believe that we can establish that through clear and  
24 convincing evidence.

25 Judge, I think initially we need to review the

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1 facts of the case. Specifically, this defendant is charged  
2 with making a direct threat to kill the United States  
3 Congressman and his family. The threat was made on or about  
4 19 October, was left at the congressional office of the  
5 victim. The death threat was graphic and aimed at the victim  
6 and his family. The death threat specifically linked the  
7 threat to the performance of the victim's official duties,  
8 Your Honor.

9                   Judge, at this time I would play into the record  
10 the recordings of the threat call. For the record, I have  
11 previously made this available to defense counsel, as well as  
12 probation.

13                   THE COURT: All right. Any objection, Ms. Bianco?  
14 And you've heard it?

15                   MS. BIANCO: I've heard it, yes, Your Honor. No  
16 objection.

17                   (Audio recording played.)

18                   MR. GESTRING: Your Honor, that's where the  
19 recording terminates. Judge, the call was traced to a 315  
20 phone number, area code (315)521-0141. The case was  
21 investigated by the United States Capitol Police initially,  
22 who referred it to the Federal Bureau of Investigation for  
23 follow-up investigation.

24                   In review of the 18 U.S.C. 4132(g) factors favors  
25 detention. First, the offense, the nature and

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1 characteristics of the offense. Judge, he is charged with  
2 two significant crimes; 875 is a five-year felony and the 115  
3 violation is a ten-year felony. Clearly it was a  
4 congressional intent to take threats made in interstate  
5 commerce, as the 875, or with respect to an official victim,  
6 as the 115, very seriously.

7 Judge, the defendant made a direct threat to kill a  
8 Congressman and his family. The threat was delivered clearly  
9 and with chilling clarity. The threat related directly to  
10 his official duties. It specifically related to his  
11 consideration of a piece of legislation that is currently  
12 before the United States Government and was directly related  
13 to his duties as a United States Congressman.

14 Disturbingly, Judge, as the Court heard, and I  
15 think is evident from the filings earlier, specifically the  
16 criminal complaint which relates to the content of the  
17 threat, the call ends with the defendant saying that he would  
18 give his life in furtherance of his cause. As the Court is  
19 aware, any type of threat followed up with a willingness to  
20 die in furtherance of that threat, that's a chilling  
21 prospect, Your Honor.

22 The Court is probably aware of the net neutrality  
23 issues that are presently in the news. There is an FCC vote  
24 next week I think it's scheduled. I would note that as  
25 recently as yesterday there were nationwide protests in

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1 support of various positions with respect to net neutrality  
2 around the country, specifically boycotting Verizon locations  
3 and other locations, and it clearly shows the passions of the  
4 people on both sides of the issues with respect to net  
5 neutrality, Judge. And that's a factor under the nature and  
6 circumstances I think the Court can and should take into  
7 consideration.

8 Judge, with respect to the weight of the evidence,  
9 I think that's strong as well and also favors detention.  
10 Specifically, as the Court heard, we have a recording of the  
11 death threat and the defendant's voice is both unique with a  
12 speaking pattern. We've identified the calling number. We  
13 have phone numbers, including subscriber records, which trace  
14 that telephone back to the defendant. I would also note that  
15 at the time of his arrest, he was in possession of that very  
16 same telephone, Judge.

17 Further, the FBI on two occasions contacted the  
18 defendant on that same telephone, the telephone number that  
19 was identified as making the threat against the Congressman  
20 and his family, and the FBI twice called that number and  
21 spoke to the defendant on that number.

22 Judge, in the course of a noncustodial interview  
23 with the defendant, he made several admissions. He admitted  
24 making the call; he admitted that he used strong language; he  
25 admitted that it probably could have been construed as a

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1 threat; and he terminated it by saying I'm sure they didn't  
2 appreciate it.

3 Judge, significantly, after his arrest he also made  
4 spontaneous statements to the FBI, "You guys got a big score  
5 tonight," and "I made the call, you're just doing your job,  
6 this just seems a bit ridiculous," as if to somehow  
7 underscore his activities but obviously admitting the conduct  
8 itself.

9 Judge, further, under the 3142(g) factors with  
10 respect to the personal characteristics, it's the  
11 government's position that those do not support release; in  
12 fact, they favor and support detention.

13 The defendant's character, Judge, there has been  
14 discussion about his access to firearms. There has also been  
15 discussion about his training regimen with respect to  
16 firearms. And I understand there's some disagreement between  
17 the position set forth in the Pretrial Services Report as  
18 well as the defendant's position whether he was formally  
19 going to a shooting range or whether he was informally  
20 receiving firearms training from a friend of his, but  
21 ultimately, a man who is threatening to kill a Congressman  
22 who has weapons and is training those weapons is a dangerous  
23 combination.

24 There is also information in the December 8  
25 addendum related to books that specifically the Probation

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1      Officer noted some of the books dealt with assassination of  
2      presidents. Defense counsel indicated one of the books was  
3      *Killing Lincoln*. I would note that the subtitle of that book  
4      is *The Shocking Assassination That Changed America Forever*.  
5      And I understand the defendant is a history major and that  
6      absolutely an innocent just simple possession of that book in  
7      and of itself is not enough to merit detention, but certainly  
8      in the context of everything we have here is a concern for  
9      the government, and we submit should be a concern for the  
10     Court under 3142 and which should support detention.

11              He has previously expressed strong animosity for  
12     law enforcement, especially federal law enforcement. He was  
13     described in his own psychological report as both rebellious  
14     and anxious, which is a bad combination, Judge, when given  
15     the other materials.

16              With respect to the defendant's physical and mental  
17     condition, we're not aware of any physical condition which  
18     would support his release. Certainly with respect to his  
19     mental conditions, I know the Court was concerned, the  
20     parties were concerned to the extent that we arranged for  
21     Dr. Lazzaro to conduct his interview with the defendant and  
22     provide a psychological evaluation report, which he did  
23     yesterday. Judge, we have some significant concerns about  
24     the contents of that report, as well as Dr. Lazzaro's  
25     conclusion where Dr. Lazzaro does conclude that Mr. Angelo

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1 will not be a danger to himself or others, however the  
2 supporting --

3 THE COURT: Get to that for me because he does  
4 ultimately conclude that he doesn't think he would be a  
5 danger.

6 MR. GESTRING: He does, Judge. And I think there  
7 is some concerns within the report itself. I think it's  
8 internally inconsistent and doesn't appear to support that  
9 conclusion. I think as a threshold matter, I don't think the  
10 defendant was truthful in the context of the report.  
11 Specifically, he understated his law enforcement contacts.  
12 He only mentioned one contact with respect to the marijuana  
13 use, but the probation Pretrial Services Addendum on  
14 December 8th references multiple contacts, up to and  
15 including finding the defendant unconscious secondary to  
16 alcohol.

17 THE COURT: There was a college reference?

18 MR. GESTRING: Correct. It also references an  
19 incident with a book store and some stolen materials as an  
20 employee. So I think there is some concerns there, Judge.

21 I think on page 2 under the clinical interview  
22 Dr. Lazzaro indicates that the defendant also denied -- I'm  
23 looking at the second paragraph from the bottom of the page  
24 under clinical interview, that the defendant also denied any  
25 history of substance abuse. That appears to be inconsistent

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1 with what we know, as well as what probation was able to  
2 determine, about the defendant's prior history of substance  
3 abuse, up to including again being found unconscious while he  
4 was at school, and some marijuana use related to that, Judge.

5 With respect to some of the conclusions,  
6 Dr. Lazzaro posited at several points that he feels that the  
7 defendant has -- I'm looking at the bottom of page 3 -- these  
8 profiles both fall within normal limits and suggest no mental  
9 health diagnosis. The middle of that page, further evidence  
10 of the lack of organically based neuropsychological deficits.  
11 However, he then posits further that the defendant could  
12 benefit from some type of psychotropic medications. Those  
13 conclusions appear to be inconsistent. You can't say that he  
14 has no psychological problems and yet say that he would  
15 benefit from psychotropic medications.

16 Further, Judge, I think in the personality  
17 evaluation, much of that is subjective, not objectively  
18 verified. To the extent that again there is a discussion of  
19 Mr. Angelo's alcohol use, it says Mr. Angelo received a score  
20 of 2 on the Michigan Alcohol Screening Test, which is  
21 consistent with his denial of any history of substance abuse.  
22 I think we already have other information, certainly from  
23 probation's report, that that may not be entirely accurate.  
24 So I think there is a concern about the information that was  
25 given to Dr. Lazzaro to formulate his opinion.

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1                   On the final page, page 5, he indicates that the  
2 reports would support the idea that the defendant is  
3 gregarious, social, and an outgoing individual with adequate  
4 ego strengths, but then later on posits that he may be  
5 depressed, requiring some type of psychotropic medications.  
6 To the extent those are inconsistent, I think we can't put  
7 too much weight on this report or what appears to be an  
8 outcome determinative conclusion of the doctor.

9                   With respect to family ties, it's clear that the  
10 defendant has a loving family that appeared at every court  
11 appearance. I think his father was here for the initial  
12 appearance, his parents were here for last week's appearance,  
13 and I would note that they're both here and obviously very  
14 concerned about that. And as indicated by the letter which  
15 was presented to the Court, they are very supportive of their  
16 child.

17                  However, Judge, I would note two things, one of  
18 which is that he had all of that support at the time he  
19 committed this crime, and none of that support stopped him  
20 from committing this crime. Further, Judge, as indicated in  
21 the addendum to the Pretrial Services Report, it appears that  
22 at least one of the parents is not aware of or sort of  
23 underreports the worries about the defendant's alcoholism or  
24 his substance abuse problem. And I guess the concern there  
25 would be that the family ties don't sufficiently mitigate the

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1 activity to support any type of release.

2 With respect to employment, Your Honor, it's our  
3 understanding that the defendant, while he was formally  
4 employed, is no longer so, and, therefore, that no  
5 considerations of employment would stop him from acting out  
6 or committing further crimes.

7 His residence in the community is somewhat fluid.  
8 He has moved around a lot. He has some stable history back  
9 when he was living with his parents; that's no longer the  
10 case. To the extent the Court is concerned about that, if he  
11 lives back in Geneva in the Western District, I think that  
12 could go either way, Your Honor.

13 THE COURT: What do you mean by that?

14 MR. GESTRING: I mean that his living  
15 accommodations here appear to be transient, meaning that he  
16 doesn't have substantial roots here or in any one of these  
17 residences where he is now. He has been moving around a lot  
18 and --

19 MS. BIANCO: I'm going to object. I thought we  
20 weren't proceeding on the ties to the community, risk of  
21 flight. So what is this all about?

22 MR. GESTRING: Well, Judge, I think it's a 3142(g)  
23 factor.

24 THE COURT: And I asked him a question to explain  
25 it, Counsel. Your objection is overruled.

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1                   MR. GESTRING: I would also note that the Pretrial  
2 Services Report does indicate travel outside of the United  
3 States as recently as three weeks ago. The defendant had a  
4 passport at the time, traveled to Canada, has other foreign  
5 travel as well.

6                   Judge, the government is not aware of any other  
7 criminal history or past conduct other than that which is  
8 referred to in the Pretrial Services Report. But certainly I  
9 think that we do agree with Pretrial Services' conclusion  
10 with respect to electronic monitoring. To the extent that  
11 the Court would consider that an adequate protection for  
12 either the Congressman or his family or society, we think  
13 that would not be adequate. It would certainly not prevent  
14 him from committing the crime he is charged with. He  
15 certainly could make the threats while he is on electronic  
16 monitoring.

17                   Further, Judge, it would not be sufficient to  
18 prohibit him from actually traveling. I think Pretrial  
19 Services does a very good job of setting forth how in this  
20 case the electronic monitoring would be insufficient to  
21 physically limit the defendant. There would be concerns  
22 about even if he did travel, who would then know about it,  
23 who would be notified about it, what to do at that point.  
24 Those safeguards would not be sufficient, Judge, in our  
25 opinion to adequately safeguard the public or the victim.

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1                   Ultimately, Judge, on those facts and as we move  
2 forward, it's our position that there are no condition or set  
3 of conditions which would adequately protect the public,  
4 which this Court could set which would adequately protect the  
5 public from the defendant.

6                   THE COURT: Just so I'm clear, you don't think he  
7 is a risk of flight, though? I just want to clarify.

8                   MR. GESTRING: No. It's not our position that he's  
9 a risk of flight. I think I previously tendered to the Court  
10 that he was contacted twice by the FBI, he returned their  
11 calls, he met with them voluntarily. So we're not proceeding  
12 under that theory, Your Honor.

13                   THE COURT: Thank you. Ms. Bianco.

14                   MS. BIANCO: Your Honor, before we begin, I guess I  
15 question under what basis the government is moving for  
16 detention, whether it's under 18 3142(f)(1), that this is a  
17 crime of violence, or under (2), that he is a risk of flight  
18 and a serious risk that he will obstruct or attempt to  
19 obstruct justice. I don't believe that 18 U.S.C. 3142(1)  
20 applies that this is a crime of violence. Specifically,  
21 under the *Johnson* case, which struck down the residual clause  
22 as vague and overbroad and unconstitutional, a crime of  
23 violence must involve physical force that could result in  
24 pain. If you can do it without that kind of force, it's not  
25 a crime of violence. "Violent force, force capable of

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1 causing physical pain or injury to another." And I'm citing  
2 559 U.S. 133 at 140.

3 You can threaten someone without using force at  
4 all. So I would contend that this is not a crime of violence  
5 and that the standard that this Court should be looking at is  
6 under 18 U.S.C. 3142(2). And there is two specific prongs  
7 under that. The government could move for detention if there  
8 is a serious risk that the person will flee. Well, the  
9 government's not moving on a risk of flight. And the second  
10 basis is a serious risk that such person will obstruct or  
11 attempt to obstruct justice, or threaten, injure, or  
12 intimidate, or attempt to threaten, injure, or intimidate a  
13 prospective witness or juror.

14 So that's a completely different standard, Judge.  
15 And I would note under 18 U.S.C. 3142(b) it mandates pretrial  
16 release unless the Court determines that such release will  
17 not reasonably assure the person's appearance or will  
18 endanger the safety of any person or the community. And,  
19 specifically, the Court should set the least restrictive  
20 conditions necessary to reasonably assure the person's  
21 appearance and the community's safety. But the provision  
22 that the conditions reasonably assure appearance and safety  
23 does not require a guarantee of appearance or safety. And  
24 I'm citing *United States versus O'Brien*, 895 F2d 810 (First  
25 Circuit 1990); *United States versus Fortna*, 769 F2d 243

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1 (Fifth Circuit 1985.)

2                   Judge, in reading the addendum to the Pretrial  
3 Services Report and why they are recommending detention, I  
4 want to address some of those issues. Specifically, they  
5 talk about contact with the police and unlawful possession of  
6 marijuana, and that apparently was two incidents. He was not  
7 convicted of anything. Both of those charges were dismissed.

8                   They talk about an event that happened at a book  
9 store. He was not charged with any crime at the book store.  
10 The book store handled it.

11                  They talked about him becoming drunk and passing  
12 out. He was a freshman in college. That was ten years ago.  
13 So while that did happen, it was ten years ago. There is no  
14 indication that he has committed any type of crime in the  
15 last several years for the Court to be concerned.

16                  With regards to the books that were on his shelf,  
17 first of all, we weren't provided with the names of any of  
18 these books, photos of these books, how many books there  
19 were, but from my understanding from both my client and his  
20 father, there were a couple of Bill O'Reilly books, the  
21 *Killing of Lincoln* and another killing of somebody, but it  
22 was a Bill O'Reilly best selling book that his father bought  
23 him. He was a history major in college and had a shelf full  
24 of history books and text books, so these books are not  
25 dispositive that he tried to kill someone.

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1                   With regard to the gun, the gun that was found is  
2 one long gun. It had not been used in over one year. He had  
3 went to learn how to use the gun on the reservation with a  
4 friend who was trying to teach him.

5                   THE COURT: What's the basis of your proffer that  
6 the gun hadn't been used within over a year?

7                   MS. BIANCO: That's what my client advises me, had  
8 not been used in over one year. He went -- he was trying to  
9 learn how to use the gun with his friend. He didn't belong  
10 to a shooting range. He didn't take official lessons. But  
11 his friend was trying to teach him how to use the gun. But  
12 the gun has no connection to this particular case.

13                  I notice that the government played the call, the  
14 call that occurred in October, which was a little more than a  
15 minute long, maybe seventy seconds. In the call the person  
16 who's speaking appears to be slurring his words, appears to  
17 be intoxicated. And you'll note that the call ends halfway  
18 through a sentence, which is apparently when the answering  
19 machine shuts off.

20                  The caller never calls back to continue the threat,  
21 not that night or not any other night. My client was not  
22 arrested until December. There is no allegation whatsoever  
23 that he tried to call the Congressman or he tried to attempt  
24 to see the Congressman in any way, shape or form between the  
25 time of the initial call and the time of his arrest.

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1                   At the time when he was interviewed by the FBI, he  
2 met with the FBI once voluntarily, they asked to meet him  
3 again, they arranged for a time, he couldn't make that time  
4 so he called and said he would be late, and then he showed  
5 up. So, he voluntarily met with the FBI on two separate  
6 occasions and this was some six weeks after the alleged call.

7                   Judge, with regards to Dr. Lazzaro's report, I  
8 notice that the government points out a number of different  
9 things on the report that they contend are inconsistent.  
10 Well, Dr. Lazzaro does a number of objective written tests  
11 and he separates each test and their results. The fact that  
12 some of the tests are inconsistent with another does not mean  
13 his report is inconsistent; it means the testing itself is  
14 inconsistent in some respects.

15                   Now, there were I believe seven separate subjective  
16 tests and one objective test, which was the clinical  
17 interview. With regards to the fact that Dr. Lazzaro said he  
18 may be suffering from depression and may need some type of  
19 medication, he is apparently relying on the results of the  
20 objective test, not the clinical interview. The clinical  
21 interview where my client appears gregarious to a certain  
22 degree, it doesn't mean that he is not depressed or  
23 clinically depressed, it means that the testing showed there  
24 was some indication of depression. And Dr. Lazzaro didn't  
25 say he should get medicine, he said he may be given a

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1 referral for medication, if deemed necessary, by a mental  
2 health treating person. It's not a definite depression, it's  
3 a possibility, he is looking at that.

4 The guidelines in this case, in the event my client  
5 were convicted, are 6 to 12 months. The government can't  
6 hold him forever. There is no reason to believe that he  
7 can't be released on conditions. We'll agree with every  
8 condition that the government proposed, and including  
9 electronic home confinement, living with his parents, not  
10 drinking, going to counseling, we'll agree with each and  
11 every one of those conditions, and I think that can assure  
12 that he is not a danger to the community.

13 The only evidence that the government cites that he  
14 is, in fact, a danger is the call, the 70 second call, the  
15 unrelated gun. But they put the two together to say somehow  
16 he is dangerous, along with the Bill O'Reilly books. So  
17 putting that all together, somehow he is a danger to the  
18 community for a 70 second call seems a bit unreasonable,  
19 especially when the guidelines call for a 6 to 12 month  
20 sentence. Criminal history category I, Zone B, jail isn't  
21 even mandatory.

22 My client has never been to jail before. He is a  
23 college graduate. He has a stable family with a stable home.  
24 His parents have shown up each and every time. And there is  
25 no reason to believe that he can't follow the conditions of

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1 release.

2 For those reasons, Judge, I would ask you to  
3 release him on the conditions that the government suggested,  
4 and we would go along with that in addition to electronic  
5 monitoring. The only reason he doesn't have a job right now  
6 is because he was fired from his job when he was arrested for  
7 this offense. He has a long history of employment. He  
8 worked at the Cheesecake Factory for six solid years, and  
9 then he went to work at the Apnea Corporation where he was  
10 working last. But there is no reason to believe that he  
11 wouldn't be able to work or that he has a sporadic work  
12 history or he is somehow a fly-by-night. He has lived in  
13 three different areas in his life; Geneva, Albany, Syracuse.  
14 Geneva, where he grew up; Albany, where he went to college;  
15 and Syracuse, where he worked after he graduated from  
16 college.

17 So he has substantial ties and he is not a risk of  
18 danger. And the report from Dr. Lazzaro, which is based on  
19 objective testing, shows that he is not a risk of danger.

20 THE COURT: One objective test and seven subjective  
21 tests?

22 MS. BIANCO: Well, Judge, I believe the objective  
23 test was --

24 THE COURT: I thought you said seven subjective?

25 MS. BIANCO: No; seven objective, one subjective.

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3 THE COURT: All right.

4 MS. BIANCO: The subjective test would have been  
5 the clinical interview.

6 THE COURT: Got you.

7 MS. BIANCO: So the seven objective tests, which  
8 are standardized, when someone fills them out they go through  
9 the categories and they come up with their conclusions, he  
10 has rated that he is not dangerous. We have proof that he is  
11 not dangerous. And the government has not met their burden  
12 to show that no condition or combination of conditions would  
13 potentially threaten the community or the Congressman.

14 He is willing to stay away from the Congressman,  
15 have an order of protection, not call, not having anything to  
16 do with him or his family or any government agency regarding  
17 net neutrality. I mean, he is willing to abide by any  
18 condition this Court would set.

19 THE COURT: Thank you, Ms. Bianco. Mr. Gestring,  
20 anything else?

21 MR. GESTRING: Judge, I think to the extent the  
22 Court is concerned about *Johnson*, I think the 2010 decision,  
23 clearly this is a 2017 statute, I think we're good to go as  
24 far as that goes. *Johnson* related to the residual exception,  
25 as it came to be known, with respect to a Florida violent  
felony and some crime of violence discussion, which was very  
nebulous. And the Florida battery statute that was at issue

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1 in that case did not specifically refer to use or any type of  
2 a threat or the same things which are contained in the  
3 statute today, so I think we are good to go as far as that  
4 goes, Judge.

5 THE COURT: And it is a crime of violence, it is  
6 your position?

7 MR. GESTRING: It is. Under 3142(f)(1)(A), the  
8 requirement is a crime of violence plus a crime which is  
9 punishable by imprisonment of ten years or more. Clearly 115  
10 satisfies that as one of the elements is the threatened use  
11 of force against the individual. And under 3156(a)(4)(A),  
12 that which defines a crime of violence, it specifically says  
13 an element of the crime is the use or threatened use of  
14 force. And it's clear from this case that the defendant  
15 threatened the use of force against both the Congressman and  
16 his family by virtue of ultimately killing them.

17 THE COURT: Thank you. Anything else, Ms. Bianco?

18 MS. BIANCO: No, Your Honor. Thank you.

19 THE COURT: I'm going to take a five minute recess.

20 MR. GESTRING: Thank you, Judge.

21 THE CLERK: Court is in recess.

22 (Recess at 3:50.)

23 (Reconvene at 3:55.)

24 THE COURT: I've given this a lot of thought before  
25 today and I've reviewed all of the information before me,

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1 including the Pretrial Services Report and Addendum,  
2 Dr. Lazzaro's report, parents' letter, the arguments of  
3 counsel, and I am going to order your detention, Mr. Angelo.

4 In considering the factors that I have to consider,  
5 first of all, this is a crime of violence under the statute.  
6 I don't agree with the defense's argument that it is not; I  
7 agree with the government's argument that it is a crime of  
8 violence.

9 I'll put all of this in an order, but in terms of  
10 the nature and characteristics of the defendant, the threats  
11 of violence to a public official and his family clearly  
12 pertains to his official duties. In listening to the  
13 recording, you know, he left the message on the Congressman's  
14 voicemail, and he has got a firearm and he is allegedly  
15 taking shooting lessons, and there may be an indication that  
16 he was drinking when he left the recording; however, he was  
17 quite articulate and precise in the threat, and that gives me  
18 pause.

19 And that coupled with Dr. Lazzaro's report in terms  
20 of his findings that he is rebellious and anxious, the  
21 alcohol abuse. In terms of his characteristics when you  
22 couple the alcohol abuse with this type of a threat and  
23 firearms are involved, he is taking shooting lessons of some  
24 kind, I find that he is a danger to the community, and I find  
25 that the government met its burden by clear and convincing

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1 evidence that he is a risk of danger.

2 The weight of the evidence is strong against the  
3 defendant and the seriousness of the risk to the community,  
4 as well as the Congressman and his family, are very prevalent  
5 in the threat in and of itself.

6 So I will put all of this in an order, as I said,  
7 and that will go up on the docket as soon as I can get it up  
8 on the docket. But I am ordering Mr. Angelo's detention at  
9 this time. All right. So you're going to be remanded to the  
10 marshals, Mr. Angelo.

11 And anything else from the government?

12 MR. GESTRING: Not with respect to detention,  
13 Judge. I have had some communications with defense counsel  
14 earlier today with respect to the next step in the case. I  
15 don't want to speak for her, but I believe that we'll be  
16 having a status -- we'll provide some discovery at this  
17 point, voluntary discovery to defense counsel with respect to  
18 the investigation and it's my understanding that they'll be  
19 requesting a status after the holidays.

20 THE COURT: Get a speedy trial stip up on the  
21 docket, too, if that's going to be necessary, because the  
22 clock is running. We had stopped it up until today, but the  
23 clock is going to start ticking.

24 MR. GESTRING: Yes. I'm not familiar entirely with  
25 the procedure, but if we can make an oral motion for the

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3 tolling of the speedy trial clock in the interest of justice  
4 pending the next status date, or if the Court would prefer to  
5 have something filed in writing.

6 THE COURT: I would prefer to have something filed  
7 in writing.

8 MR. GESTRING: Understood, Your Honor. Thank you.

9 THE COURT: Anything else from the defense?

10 MS. BIANCO: No, Your Honor.

11 THE COURT: The defendant is remanded at this time.

12 THE CLERK: Court is adjourned.

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C E R T I F I C A T I O N

I, EILEEN MCDONOUGH, RPR, CRR, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of New York, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Eileen McDonough

EILEEN MCDONOUGH, RPR, CRR  
Federal Official Court Reporter